

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

SCOTT D. LAKE)	
Claimant)	
VS.)	
)	
VARCO MOTORS)	Docket No. 1,011,960
Respondent)	
AND)	
)	
CONTINENTAL WESTERN INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Claimant appeals the September 14, 2005 preliminary hearing Order of Administrative Law Judge Bryce D. Benedict. Claimant was denied additional temporary total disability compensation after the Administrative Law Judge (ALJ) determined that claimant had reached maximum medical improvement (MMI) and was only in need of maintenance medical treatment.

ISSUES

Claimant, in his Application For Review By The Workers Compensation Appeals Board, raises the following issue:

Whether the ALJ exceeded his jurisdiction in finding the claimant to be at maximum medical improvement and thus denying temporary total disability benefits and ordered medical treatment with Dr. Allen until the claimant is certified as having reached maximum medical improvement.¹

Claimant argues in his brief to the Appeals Board (Board) that the determination that claimant has reached MMI is contained in K.S.A. 44-534a as a "certain defense."

¹ Application For Review By The Workers Compensation Appeals Board at 1.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purposes of preliminary hearing, the Board finds the Order of the ALJ should remain in full force and effect, and the appeal of claimant in this matter should be dismissed.

In workers compensation litigation, not every alleged error in law or fact is reviewable from a preliminary hearing order. The Board's jurisdiction to review preliminary hearing orders is generally limited to the following issues, which are deemed jurisdictional:

1. Did the worker sustain an accidental injury?
2. Did the injury arise out of and in the course of employment?
3. Did the worker provide timely notice and written claim of the accidental injury?
4. Do certain defenses apply? (Is there any defense that goes to the compensability of the claim?)²

Additionally, the Board may review those preliminary hearing orders where it is alleged the administrative law judge has exceeded his or her jurisdiction in granting or denying the benefits requested.³

Whether claimant has reached MMI is not an issue over which the Board takes jurisdiction on appeal from a preliminary hearing. Claimant argues that this issue qualifies as a certain defense under K.S.A. 44-534a. However, K.S.A. 44-534a has been held to apply to defenses that relate to the compensability of the claim.⁴ Respondent is not arguing in this instance that claimant did not suffer an injury on June 3, 2003, when he struck his left wrist with a sledge hammer. The current argument deals with whether claimant has reached MMI and whether additional temporary total disability compensation is in order. Those issues do not deal with the compensability of the claim, but rather claimant's entitlement to temporary benefits.

The Board finds that the issue raised by claimant is not one over which the Board takes jurisdiction on appeal from a preliminary hearing and should, therefore, be dismissed.

² K.S.A. 44-534a.

³ K.S.A. 2002 Supp. 44-551.

⁴ *Carpenter v. National Filter Service*, 26 Kan. App. 672, Syl. ¶ 3, 994 P.2d 641 (1999).

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order of Administrative Law Judge Bryce D. Benedict dated September 14, 2005, remains in full force and effect and the appeal of the claimant in this matter should be, and is hereby, dismissed.

IT IS SO ORDERED.

Dated this ____ day of December, 2005.

BOARD MEMBER

c: Mitchell D. Wulfekoetter, Attorney for Claimant
Eric T. Lanham, Attorney for Respondent and its Insurance Carrier
Bryce D. Benedict, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director